

W5YI

National Volunteer Examiner Coordinator

REPORT

Up to the minute news from the world of amateur radio, personal computing and emerging electronics. While no guarantee is made, information is from sources we believe to be reliable. May be reproduced providing credit is given to The W5YI Report.

Fred Maia, W5YI, Editor, P.O. Box 565101, Dallas, TX 75356-5101

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...and much, much more!

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AMATEUR RADIO BUSINESS SERVICE?

FCC "Bombshell" Would Alter "No-Business Rule"

In response to discussions with ARRL officials and a letter from a Michigan amateur, the FCC suggested changes to the "no-business rule" that could have enormous impact on the Amateur Service.

Among other changes, the proposal would allow hams to conduct personal and club business over amateur frequencies; to make increased use of amateur spectrum by or for local governments, non-profits and the news media, and would permit payment of teachers to operate amateur stations. Even the long sought after permission to "order pizza" on the air would be granted.

Amateurs now provide some communications for others. But they are supposed to refrain from providing regular organizational or business communications for which landline telephone or cellular systems, business radio frequencies or other services are available. Amateur safety-of-life communications support is permitted, but should stop when the emergency is over and when other radio services should be used - even if the other services would cost money to use.

Those traditional policies would end under the new proposal. The FCC has suggested that the League file a *Petition for Rulemaking* to begin the

changes.

Key to the concept is that Amateur Radio is supposed to have "excess capacity" - more spectrum than it needs - and that the extra capacity could be opened up for non-amateur or quasi-amateur use. Emergencies would continue to take priority. Regular amateur communications would be classified into nine categories and non-amateur communications would take a secondary status.

The suggested changes are intended to reduce the pressure on the FCC from some net, bulletin and phone-patch operators, "swap shops," volunteer groups, marathon organizers, missionaries and organizations who want more liberal rules about what communications are permitted. The lobbying, letter writing and Congressional inquiries on this subject seem to be having an effect. The changes could transform Amateur Radio into more of a "Personal and Business Radio Service."

Filing ARRL reports by packet

Kim Nothelfer (call sign unknown) of Saginaw, Michigan, asked the FCC about filing ARRL Field Organization reports over amateur packet radio. "The report that I am referring to is called the FSD 212," Nothelfer wrote. "It tells the League how

JCS DAC

many people are available for volunteer emergency service. Their explanation to me is that it is OK to do so as long as the collected information is mailed to the League and not sent via Amateur Radio.

"If this is not all right to do, then would it be OK to send the information from one volunteer to another, the information accumulated, and not sent to the League, but kept in our state with our emergency coordinator? This would be from one volunteer to another and never sent to the League.

"I understand that you cannot go so far as to make a list of the do's and don'ts of Amateur Radio. However, we look to you for clarification on this matter. ...Also, we have to look at the new hams who are coming into packet radio due to the no-code license, I am sure there will be some confusion on their part and we need to help them get started without conflict between the League and 97.113."

The FCC replied, in part:

"Section §97.113(a) specifically prohibits an amateur station from transmitting any communication the purpose of which is to facilitate the business or commercial affairs of any party. ... (T)he term "business," in this instance, is used in the broadest context. It includes all types of communications that are intended to facilitate the regular business or commercial affairs of any party, whether individual or organization, whether for-profit or not-for-profit, whether charitable or commercial, or whether government or non-government.

"...In your case, if amateur service frequencies are used to facilitate the collection or reporting of information for the ARRL, then the amateur service is being used to facilitate the regular business or commercial affairs of the ARRL. The use of the amateur service to transmit this information is prohibited by Section §97.113(a) of the Commission's Rules."

Letter kicked off discussions

We understand that the Nothelfer letter kicked off a series of meetings between the ARRL and the Commission about the business rule. The result of those meetings was revealed in a speech given by FCC Private Radio Bureau chief Ralph Haller/N4RH, to the ARRL National Convention in Saginaw, Michigan, August 24. Here are the remarks of N4RH:

"We can't help but be impressed with the pioneering work you are doing with your new high-speed systems. Not only are you able to accommodate the influx of new operators, but it appears from what you are telling us, you have an excess capacity.

"We understand from your letters and phone calls that you are anxious that your excess capacity be used to help alleviate the demands being placed on the maritime frequencies, the common carriers, the public safety frequencies, the government systems, the business frequencies, and so on.

"The existing absolutely-no-business rule, unfortunately, often stands in the way of your helping out. Its well-meaning purpose is to help preserve the character of the amateur service. It is a device to prevent the exploitation of the amateur service. It does, with all the subtlety of a meat ax!

"We know that it is an unpopular rule within the amateur community. Quite frankly, we have always been more than a little uncomfortable with it. As frequency managers, we feel overly bureaucratic when we have to tell you that you must not use your unused amateur service frequencies for non-amateur purposes.

"After all, the real anti-exploitation rules are rooted in your respect for the principles for which your frequencies are made available to you, and by your good judgement.

[Slide shown by N4RH:]

Non-Amateur Communications: Suggestions Based on Requests Secondary Usage

- Parade logistic support
- Non-profit organizations
- Government agencies
- Public safety agencies
- Classroom instruction
- Sell apparatus
- News media information
- Club business
- Personal business
- NOAA, WWV, etc.
- Other?

"We have suggested to your League Officers, therefore, that they consider the possibility of asking for rule making to allow your excess capacity to be used on a secondary basis for certain non-amateur communications.

"This catalog was compiled from your letters and phone calls over the years asking for permission to use the amateur service frequencies for non-amateur communications.

WOULD YOU LIKE TO BECOME A VOLUNTEER EXAMINER?
under "The W5YI Report" Program? If so, please send a copy of
your Extra Class license, the following signed statement, and a SASE
to: "The W5YI Report", P.O. Box 100, Littleton, CO 80120.
I am a currently licensed ☐ Advanced, ☐ Extra Class amateur radio
operator and wish to be a volunteer examiner. I have never had my
station or operator license revoked or suspended. I do not own a sig-

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"Obviously, your non-amateur communications would have to be limited to only those areas where the FCC regulates communications because of the prohibitions in the International Regulations. Domestically, however, you might use your frequencies to provide logistical support for a parade, race, marathon, or similar gathering;

"You might provide communication assistance to a non-profit organization, charitable organization, or public-safety agency.

"You might participate more fully in governmental systems like Skywarn;

"You might help provide classroom instruction in schools;

"You might sell or trade to amateur operators electronic apparatus;

"You might provide information to your magazines and newsletters;

"You might conduct your radio club business over the air;

"You might conduct your personal business, including ordering pizzas;

"You might provide information to the news media, including broadcast stations, newspapers and magazines;

"You might also rebroadcast the programs from other stations like the NOAA weather, Voice of America and WWV.

[Slide:]

Precedence

Amateur Service Frequency Usage

Suggestion based on Section 97.101

● PRIORITY

Providing emergency communications

● PRIMARY

Conducting amateur communications

● SECONDARY

Conducting non-amateur communications

"Providing emergency communications would continue to have the top precedence. The primary usage of your frequencies, moreover, would continue to be your regular amateur service communications. When, and only when, those two traditional usages are insufficient to completely occupy your bands, the unused frequencies would be available to you on a secondary, non-interference basis, to carry on non-amateur service

communications.

[Slide:]

Providing Emergency Communications

From Part 97, Subpart E

- Operation during a disaster
- Safety of life
- Protection of property
- Station in distress
- RACES (except drills)

"The number one priority is covered by Subpart E in your rule Part 97. For some 42 years, providing emergency communications has been at the very top of the list of purposes of the amateur service in the United States. There would be no changes in these rules.

[Slide:]

Amateur Service Communications

Primary Usage

From Section §97.503(c)

- Rules
- Station operating procedures
- Radio wave propagation
- Amateur Radio practices
- Electrical principles
- Practical circuits
- Components
- Signals and emissions
- Antennas and feed lines
- Other?

"The primary usage of the amateur service frequencies is also treated in Part 97. This list should look familiar to you. These are the very topics about which you had to learn in order to pass the examinations for your license. Exchanging ideas on how to best operate an amateur station would continue unchanged.

[Slide:]

Business Rule

Prohibited transmissions

[Suggestions based upon Phil Karn/KA9Q letter to

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QEX and on ARRL.]

- No amateur operator shall sell a communication service that uses amateur service frequencies.

- The control operator of an amateur station may accept compensation for periods of time during which the station is transmitting:

- Morse practice
- Information bulletins
- Classroom instruction

"We have been talking with our representatives about the best way to codify a new rule. This suggestion is based upon a letter that appeared in your QEX magazine. It would simply state that "No amateur operator shall sell a communication service that uses amateur service frequencies."

"The exception for W1AW to pay its control operators would continue. It adds the new exception that you want to include for classroom instruction.

"The quantity of secondary communications your systems could carry would be determined by several factors. For instance, the excess capacity of your systems in your specific locale would be an important factor. Providing communications for a race in Alaska is an entirely different situation than it would be if the race were held in a more densely populated area where more stations engage in amateur communications.

"This approach may also help solve some of the problems you have been having in managing your high-speed automatically controlled systems. You would be able to transmit, on a secondary basis, the type of messages that gave rise to the unfortunate incident on your packet system earlier this year.

"I hope that you will give this suggestion your careful attention. You could be of great assistance to those in need of better communications, and properly implemented, this approach should have no adverse effect upon what you are now doing."

[End of Haller speech]

BUSINESS RULE TO PIZZA RULE

Do we really want to conduct business on ham radio?

Editorial Comment by Frederick O. Maia/W5YI

The concept of "unused amateur service frequencies"

is a 'red flag' indicating that something unusual is going on.

If there are amateurs who believe that our spectrum should be opened up to non-amateur communications, then they should document this excess capacity. They should keep the results from Congress - where our elected representatives are signing on to H.R. 73 - a bill to protect our "excess" spectrum from encroachment by other services. We'll also have to hide the data from the FCC's Office of Engineering and Technology, which has been told by thousands of ham commenters that we intensively use our spectrum and thus no reduction is acceptable.

But maybe they're right. Maybe the no-business rule is silly, quaint and inconvenient. We passed tests. Why should we have to pay for cellular phones when we can call Domino's Pizza over the autopatch?

Why should we require race organizers, churches, firefighters, NOAA, the Voice of America or ham publications to spend money on mobile radios, telephone service, faxes, data links or the U.S. Mail when the Amateur Service is available for free?

Why shouldn't we be allowed to provide non-emergency service to television and radio broadcasters? News-gathering is fun. Why require broadcasters, police and mariners to use the spectrum allocated for their use?

Is \$97.113 antique, or does it keep Amateur Radio unique?

HAM RADIO HEADS BACK TO SPACE

NASA astronauts Brian Duffy and David Leestma passed the Tech Class amateur radio operator license examinations plus 5 wpm code at a W5YI-VEC testing session held last month in Houston.

Duffy is currently assigned to be pilot on STS-45, Atlantis, which is scheduled for launch in March 1992. Leestma is assigned as a Mission Specialist on the same flight. Both are currently awaiting their amateur call letter assignment. SAREX (Shuttle Amateur Radio Experiment) is requesting FCC waivers so they can operate from space.

Atlantis will carry a total crew of 7 on an 8 day mission. Because of space and power limitations, they will be restricted to battery powered FM voice operation on two meters. But they will fly a high inclination orbit, much like those flown by *Owen Garriott/W5LFL* and *Tony England/W00RE* (57 degrees) so they will pass over most of the populated areas of the world. This will include good coverage of the United States.

As planned, this will be a CQ mission, meaning there will be several attempts to work as many hams

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multiple choices and answers in every question.

as possible. There will also be some school contacts arranged. Working details will not be available until approximately 60 days before the launch. SAREX plans to release the timetable and frequencies as soon as they are available, probably around the first of the year.

The shuttle mission's prime objective will be to use an Atmospheric Lab for Applications and Science, that will be carried in an igloo in the payload bay.

[Thanks: Roy Neal, K5DUE, Ex-NBC newsmen, and SAREX-NASA Liaison.]

JAMMER FACES CRIMINAL PROCEEDINGS

On August 24, Grand Junction, Colo. police arrested Ernest Robert Jones of Grand Junction and accused him of interfering with law enforcement and fire department radio communications. We do not believe that he is a licensed Amateur radio operator.

Complaints from Grand Junction police and fire departments and the Mesa County Sheriff prompted the FCC to monitor the transmissions. They consisted of noise, music, catcalls, rebroadcasts of official communications and inflammatory remarks. The FCC traced the signals to Jones.

He was charged under several Colorado statutes, including criminal tampering and obstruction of government operation. He may also be charged with violating Sections 301 and 333 of the *Communications Act* by operating an unauthorized station and intentional interference.

New provisions in the Act

Under changes to the *Communications Act* that were made last year, willful and malicious interference - in any radio service - is a criminal offense, subject to fines or imprisonment, or both, for a first offense (Public Law 101-396, H.R. 3265). The House report on the change noted:

"The provision allows the Commission, in serious instances, to initially seek immediate criminal prosecution by the U.S. Attorney for such violations and to seize the offending radio equipment through execution by U.S. Marshals of a properly executed search warrant. The Commission could thereby dispense with the necessity of first completing lengthy, complex and costly administrative proceedings. ...

"...Placement of the proposed general prohibition against intentional interference in the Act, in addition to elevating the gravity of such violations, will increase public awareness of the prohibition against this particularly disruptive type of violation."

ALBANIA - ZA1A - BACK ON THE AMATEUR AIRWAVES *...after an absence of more than two decades!*

We received the following copy of the *IARU Press Release No. 4* FAXed to us from Tirana, Albania, dated September 19, 1991, regarding ZA1A operations.

Chip Margelli, K7JA from the Yaesu U.S.A. office in Cerritos will supposedly be operating ZA1A on Monday, September 23. The press release reads:

"Things are moving along according to the schedule - training and operating at ZA1A will continue until October 7th, 1991. More operating hours will be obtained every day, and a second station will be operational this weekend. (Sept. 21)

"Currently the ZA1A station is located at the PTT headquarters and access is limited -- night hour operating is impossible. The opening ceremony was attended by 50 people. It was broadcast on Tirana TV. Among those present were high administrative officials from agencies including Albanian Defense.

"The first contacts made by the Albanian students were **IN3CKK** (**Bruno Ravagni**, Trento, Italy) on CW and **IT9HZC** (**Gregorio Nicolosi**, Trecastagni, Sicily) on SSB.

"The Albanian student base is extremely qualified -- the 11 participants include 8 engineers representing several government and educational institutions. On the evening of the 17th of September the atmosphere was warm, and all ministries were represented at the highest possible level. This week will see many ceremonial activities. We are proud to be here and look forward to working you all before leaving. 73 from the Gang at ZA1A [End quote]

QSLs (along with a self-addressed stamped envelope - or SAE plus IRCs) go to the **Northern California DX Foundation**, (P. O. Box 1, Los Altos, CA 94023) The logs will be processed by computer with QSLs going forth after receipt of the logs. They did this once before with Rotuma. Post Office Box 1 is a special box set up only to handle the ZA1A operation. NCDXF is doing this for two reasons. They are trying to show the world how QSLing for a major DXpedition can quickly and efficiently be done. A lot of people are involved and they are hoping to demonstrate that they can turn around QSLs on an immediate basis using many computers which have had the ZA1A logs fed in. The objective is to mail out QSLs almost as fast as they arrive. The NCDXF is encouraging DXers to send in two SASE's, one will be used immediately after a computer search of the data base - another in the event other contacts show up. Donations are always appreciated. Make any checks payable to NCDXF.

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We were also FAXed a copy of the first Guest License issued by *The Albanian Amateur Radio Association* ...the *Shoqata Eradioamatoreve Shqiptare*. The logo of the association is a radiating radio tower with the letters SH.R.SH superimposed. The license is in two parts - one in a foreign language (which I assume is Albanian - if such exists) and English. The English version reads:

License Nr. 1 issued to Martti Laine, OH2BH, Place of birth (sic): Helsinki, Finland, Class A has been (sic) offered a guest (sic) license (Project IARU) and the callsign ZA1A according to the rules of the association. This license is valid from 16.9 [Sept. 16] to 9.10 [Oct. 9] 1991 on sites: PTT Building (Tirana). Date: 16.9 [Sept. 16]. Signed by: F.M.N. of the P.T.T.

The first station was located in the PTT building which was locked from at night - so ZA1A was unable to operate from 2300 to 0600Z which disappointed a lot of people. The other problem they have run into is a severe case of television interference. ZA1A has not been able to use the amplifier and has had to adjust their operating schedule to times that are other than ideal for propagation purposes due to the TVI. Hopefully the TVI complaints will be shortly solved ...possibly by going somewhere else to operate.

There is a relay system of stations which will become operational between now and mid October. The first demonstration contact took place as scheduled on the night of September 16th ...and ZA1A was available for regular operation the following day.

Absolute bedlam exists between 14.140 and 14.180 MHz! Albania is back! ...operating at 14.145 MHz - 5 kHz below the American (Extra Class) phone band and listening 10 to 20 kHz higher. The situation is a little bit better than the Bouvet operation, although some operators are still accidentally calling on the transmit frequency. Those that do call will most likely get a pink ticket from the FCC who are monitoring. The first couple of days there were plenty of whistles and cat-calls ...but it has now decreased somewhat. There is also interference to ZA1A from a Latin American DX Net on 14.145 around 12-1300Z.

Reception is weak, but copyable in the West Coast ...a lot better in the East where there have been some 15 and 10 meter openings. ZA1A is being worked long path in the morning. They say they are listening over a 20 kHz range, but are really listening an additional 10 kHz higher due to the pileup. ZA1A is "bunching them" up between 14.150 and 14.170 and working stations higher in frequency. No 40 meter ZA1A activity has been noted yet.

The ZA1A operation has been a very long term project ...primarily through Martti Laine. He operated there

before back in 1970 and he has maintained a relationship with authorities in Albania since then. Once they finally broke free and started to relate to the rest of the world last year, his efforts to get amateur radio re-established intensified.

With the help of the IARU they were able to finally get the Albanians to view Amateur Radio as a positive aspect for their country. You have taken a country that has hated amateur radio for decades and they are now using amateur radio in a very positive way ...similar to the way China has opened up.

Both Wayne Mills, N7NG and Chip Margelli, K7JA are currently in Albania - awaiting their turn at ZA1A. They are both part of the eight IARU sponsored teams opening amateur radio in Albania. The Italians, the Fins ...and the Japanese also have teams there. This is just the first of many operations scheduled from Albania. The Hungarians and the Japanese are going back for the CQ World Wide DX Contest.

We predict that one year from now it will be harder to work a YU than a ZA. This is perhaps the most dramatic change in attitude toward amateur radio of any country in history. The only thing comparable was China, but that was a much slower transition.

It is anticipated that 60,000 to 70,000 QSOs will take place by October 7th - the most ever for a major DXpedition. The record is something over 50,000. (There will also be hundreds of pink tickets sent out too ...surpassing the couple of hundred issued during the Bouvet operation! It is real easy pickings for the FCC monitoring stations since most stations are using their calls on 14.145.) There are several amateurs who aren't giving their call signs who are acting as policemen on 14.145, saying "Wrong VFO ...Listen Up" ...and such. They are more of a problem than the unintentional violations.

Bangladesh (S21 prefix) will be the next country to open up amateur radio. Their 14 member telecommunications board recently voted unanimously to establish amateur radio in the country and applications for ham tickets are being received.

We have almost eliminated all of the countries that don't have amateur radio for political reasons. Iran (EP prefix) issues ham licenses, but they won't rescind their letter that they sent to the ITU saying that amateur radio is illegal. There are plenty of EP licensed operators but contacts with them do not count for DXCC. The League won't recognize Iran for DXCC purposes until Iran sends another letter changing their position. Strangely, Burma sent a similar letter to the ARRL in 1964, but the League accepted the XYØRR operation for DXCC credit, probably due to different handling at the DXCC desk. [Special thanks to Chod Harris/VP2ML for his special phoned in report on ZA1A.]

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● The **Amateur Radio Industry Group** will hold their next meeting at 7:30 p.m., October 11 in Room "A" at the Safari Hotel and Conference Center in conjunction with the **Scottsdale Amateur Radio Convention**. Subjects to be discussed include videos, PSAs and the Archie comic book as well as new promotional ideas and programs. For more information contact **Craig Clark, NX1G** at 603/878-1441.

● The **COMDEX/Fall Computer Show** in Las Vegas will feature a series of seminars on October 20th called the **COMDEX/Marketing University**. The free programs, presented by the FCC, will feature experts from the computer, government, legal and scientific community who will cover, among other things, potential Commission proposals to relax computer certification requirements ...and recently authorized increases in fines for violations of FCC rules. The program is scheduled for 1:30 p.m. in the Las Vegas Convention Center's North Meeting Rooms. Call 804-441-6472 for more details.

● On September 9th, all VEC's were issued new instructions by the FCC on the **handling of telegraphy exemptions** requested by handicapped amateurs.

(1.) Administering VE's are to provide CSCE's (*Certificates of Successful Completion of Examination*) showing credit for Element 1C (20 wpm telegraphy) to examinees who have passed Element 1A (5 wpm code) and who submit an authentic *Physician's Certification of Disability* and *Patient's Medical Release* to them.

(2.) The doctor must be an M.D. or a D.O., Doctor of Osteopathy. The FCC adopted the definition of "physician" to include only doctors who have full medical privileges to act as judges of the examinees overall condition with respect

to their inability to take the higher speed telegraphy examination. "...we wanted them to be persons who could assess the overall physical and mental health of the whole person, rather than a health care provider who specializes in any one aspect of a person's health and well-being."

(3.) This CSCE will be valid for a period of 365 days towards credit for Element 1B (13 wpm code) or 1C (20 wpm code). After that period, the severely disabled applicant must provide the VE team with a new (original and currently dated) doctor's Certification since a CSCE is valid only for a period of 365 days. See Section §97.505(2)

(4.) Handicapped examinees who have the notation "Rule Section §97.501 waived" imprinted on their amateur operator's license will receive Element 1C (20 wpm telegraphy) credit for 365 days from Oct. 31, 1991, or through Oct. 30, 1992. On Oct. 31, 1992, a new (original and currently dated) Physician's certification would be required from such examinees.

(5.) Section §97.505 of the Commission's Rules allows only administering VE's to give element credit. Therefore, effective immediately, all applications with the accompanying *Physician's Certification of Disability* and *Patient's Release* must be submitted through an administering VE team and may not be submitted directly to the VEC. This includes those applications that do not require a written element and who will be getting credit for such element.

All applications must be signed by three administering VE's in Section II-B of the Form 610 application.

(6.) Temporary disabilities do NOT qualify for an exemption of the higher speed, 13 and 20 wpm, amateur radio telegraphy requirements. Part §97.505(a)(5)(i) is being revised to specify that severe

handicaps are those which extend for more than 365 days beyond the date of *Physician's Certification of Disability*.

(7.) The FCC has declined to issue a list of disabilities that would preclude a person from passing a high speed telegraphy examination. "The list of a list would, in effect, prejudice the outcome. Our decision is to rely upon the expertise of physicians to make the determination, on a case-by-case basis, as to whether the amateur operator's disability is such as to prevent the passing of the 13 or 20 wpm telegraphy examination. We will rely on the VE's, the volunteer-examiner coordinators (VEC's), and the applicants to make *Fact Sheet No. 205 [Information for Physicians]* available to physicians."

Copies of the *Physician's Certification/Patient's Release* and *Fact Sheet No. 205 Information for Physicians* form are available from the **W5YI-VEC Office (P.O. Box 565101, Dallas, Texas)** or any other VEC. (An SASE is appreciated.)

[VEC instructions issued Sept. 9, 1991, by Marcus D. Stevens, Chief Special Services Branch, FCC, Gettysburg, PA.]

● Due to recent resignations, Amateur Satellite Corp. president, **Doug Loughmiller, KO5I**, recently announced several **appointments to fill key vacant AMSAT positions**.

Bill Tynan, W3XO, a founding member of AMSAT, will replace **Dr. John Champa, KØOCL**, in the Executive Vice President slot.

Bruce Rahn, WB9ANQ, has agreed to serve as interim Vice President of Operations until a permanent replacement can be selected. He replaces **Courtney Duncan, N5BF**.

Former V.P. of Field Operations **Mike Crisler, N4IFD**, has been appointed once again to this position replacing **Dr. Jeff Wallach, N5ITU**, who has been particularly busy with his professional workload.

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- Advanced or Extra Class amateurs who have IBM compatible PC's may wish to conduct periodic examinations for the Novice, Technician and Technician (plus code) classes. Our new ***Exam Express testing program*** allows teams of three accredited VE's to administer the written examinations right at the computer keyboard ...or you may print out as many unique computer generated tests as you wish. Write the ***W5YI-VEC Office (P.O. Box 565101, Dallas, TX 75356)*** for a VE application and complete details. The software (and accreditation) is free!

THE HAM RADIO HANDBOOK - NOW!! Obtain your Amateur Radio License Without Taking a Morse Code Test. Contains all possible Element 2 and 3(A) test questions, multiple choices, correct answers

FCC DENIES TELEGRAPHY CIVIL RIGHTS COMPLAINT

On October 16, 1990, the FCC's Private Radio Bureau denied a civil rights complaint filed by Peyton L. Moncure of Clifton, Virginia. Moncure had accused the Commission with illegally discriminating against handicapped individuals by withholding Amateur radio voice operation from the disabled when they were physically unable to demonstrate a knowledge of Morse code. Moncure appealed the FCC Bureau Chief's refusal to the full FCC on October 22.

In his petition to the full Commission, Moncure argued that the telegraphy proficiency requirement violates the *Rehabilitation Act of 1973* and the *Americans with Disabilities Act of 1990 (ADA)*. He says the sponsors of those bills wanted handicapped Americans to have equal access to all types of communications. Moncure demanded that the FCC totally eliminate the Morse code requirement for those physically unable to communicate via telegraphy.

The Commission, however, ruled that its Private Radio Bureau acted properly. *International Telecommunication Union (ITU) Radio Regulation No. 2735 (Geneva 1979)* requires a person seeking a license to operate an amateur station transmitting on frequencies below 30 MHz to prove proficiency in telegraphy. The FCC said they can't eliminate that requirement without violating the commitment of the U.S. to abide by international treaty.

To support his complaint, Moncure had submitted a letter from a Senate ADA sponsor stating that "...the legislation would prohibit discrimination ...insofar as communications are concerned." The FCC said that the ADA telecommunications provisions does not apply to the amateur service, but instead to common carriers and broadcasters who must provide additional services to the hearing, speech and sight impaired.

The Commissioner's also denied Moncure's appeal of his request for a five words-per-minute telegraphy waiver "...because a waiver would violate *Radio Regulation No. 2735*. The *Rehabilitation Act* did not supersede the international requirement. [The Act] prohibits discrimination only against individuals who are 'otherwise qualified' ...a person unable to meet the telegraphy requirements for amateur operation is not a qualified person... Furthermore, ...there is no requirement to modify a licensing requirement to accommodate a handicapped person, if such modification would result in a substantial alteration of the amateur operator licensing system."

The FCC said that Moncure's request to eliminate the code requirement for the disabled was now made partially moot "...by our action to revise the examination requirement for the Technician Class amateur operator

license. Effective February 14, 1991, an examinee no longer must prove Morse code proficiency in order to qualify for a Technician Class amateur operator license. The Technician Class license includes all amateur operator privileges above 30 MHz."

"Further, although all persons who wish to engage in amateur service communications on frequencies below 30 MHz must still pass at least a 5 words per minute telegraphy examination, there are special procedures to help handicapped individuals. Blind persons may take the examination in Braille or have the questions read to them. Individuals with hearing impairments may use a vibrating surface of a flashing light for the telegraphy receiving examination. Persons who have difficulty in hand coordination may dictate their answers. In addition, the special procedures include, where warranted, suitable pauses in sending the telegraphy message so that the examinee may absorb and interpret what was sent. The telegraphy examination usually consists of a receiving test, but, where warranted, a sending test may be substituted. The special accommodative procedures enable handicapped persons to become amateur operators, while ensuring that the telegraphy requirement of the international Radio Regulations is met." [Commission Action by Memorandum Opinion and Order, adopted Sept. 18, 1991.]

REACTION BY PEYTON L. MONCURE

We telephoned Moncure to get his reaction to the above FCC action:

"I am not sure that eliminating the Morse code from the Technician Class is enough, but I will certainly take advantage of that. I have not made a decision yet as to whether I want to take this thing to court.

"Handicapped Americans have a right to access [communications] ...the Congress has said this. The only question is whether it will take a court ruling to defend this right. It is not a question of overturning international law, it is a question of protecting constitutional rights. I heard that Japan allows amateur operation on all bands without Morse code - including those below 30 MHz. They are a member of the same ITU as the United States and must agree to the same Radio Regulation No. 2735. How do they do it? And if they can, why can't we?"

"The point of the whole matter is that there is no connection between sending by voice and sending by key. One has nothing to do with the other. The FCC is saying [in effect] that for the handicapped to use a ramp, they must have a working knowledge of steps - which is absurd. There is no reason why someone should know how to use a telegraph key ...just to use voice." [Conversation: Sept. 22, 1991]

K1MAN TAKES BULLETIN ISSUE TO COMMISSION

Exactly a year ago, Barry Bohac, Engineer-in-Charge of the FCC's Belfast, Maine, monitoring station issued a *Notice of Apparent Liability* against **Glenn A. Baxter, K1MAN** of Belgrade Lakes, Maine. The \$1,500 NAL was for willfully interfering with Amateur communications already in progress on 14.275 MHz ...and alleged incidents of broadcasting.

The FCC said the term "willful" in this context did not mean that Baxter intended to cause interference, "...but merely that the situation which led to the violation was not accidental." What Baxter did was to transmit his *International Amateur Radio Network* information service at specific scheduled times simultaneously on several HF ham bands despite several requests by stations already on frequency for K1MAN to stand by.

In the transcript compiled by the FCC's monitoring station, Baxter constantly refers to his bulletin transmissions as "...broadcasts" ...portions of which were being specifically directed toward short wave listeners. "They are our audience and we really should address that audience," the transcript reads.

K1MAN responded to the *Notice of Apparent Liability* on October 24, 1990. On November 2, 1990, the NAL was converted to a \$1,500 *Notice of Forfeiture* (fine) and Baxter was ordered to pay the fine within 30 days. K1MAN requested a "trial like hearing" which was denied. The FCC said there was no provision in the law requiring such a hearing.

Baxter denied he was broadcasting. He said his one way transmissions were not commercial broadcasting and were intended for those people interested in Amateur Radio. Such transmissions are authorized by §97.111(6). The Commission, however, reminded K1MAN that §97.3(23) defines information bulletins as "A message directed only to amateur operators consisting solely of subject matter of direct interest to the amateur service."

"If a transmission is directed to an audience larger than amateur licensees and has information that is of direct interest to people outside the amateur service, it is not an information bulletin as authorized by the FCC's rules," concluded Richard M. Smith, Chief of the FCC's Washington Field Operations Bureau in a letter to Baxter dated August 27, 1991.

"Transmissions of this nature involve broadcasting which Section §97.3(10) ...defines as '...transmissions intended for reception by the general public. ...Your transmissions ...involved broadcasting because some of them were directed to listeners of short wave radio. An example of this was your program, the *IARN Short Wave Listeners' Corner*. Short wave radio involves broadcasting stations' that direct their transmission to

'the general public in foreign countries.' This is a different service and audience than the amateur service. ...Section §73.701(a) of the Rules defines the short wave audience as the general public."

The FCC also said "There is nothing in the FCC's rules that limits the definition of broadcasting to commercial activities [or] ...that publishing a schedule of future radio transmissions results in a priority claim to the use of the scheduled frequencies."

Smith ordered Baxter to submit the \$1,500 penalty to the FCC by September 26, 1991. "Forfeitures not paid within 30 days may be recovered by the U.S. Attorney in a civil suit," he said.

Now what happens?

We talked with **Glenn Baxter, K1MAN** this past weekend. His attorneys are filing a brief in which they will invoke "res judicata" (sometimes known as collateral estoppel) which cites a Supreme Court decision supporting his position. This means basically in non-lawyer talk: "If you have made it OK for the ARRL to do it, the court will not allow the Commission to stop K1MAN from doing the same thing." Baxter says "The ARRL headquarter's station comes on frequency per a published schedule daily ...targeting non-licensed hams with their five word per minute code practice."

Glenn said, "We have the Commission in 'check mate' now, finally. There is not much they can do to wiggle out of this one. If they don't cancel the \$1,500 forfeiture, we will take it to the U.S. Court of Appeals, and after that, the U.S. Supreme Court. At the end of the tunnel, should we lose in the Supreme Court, is a jury trial here in Maine."

"We didn't realize that part, but one of the cases cited by Mr. Smith and has legal staff in their brief mentioned another case which established the law that is no surprise - that is you can't take \$1,500 from somebody without going before a jury and getting them to agree to it. No jury will agree that it's OK for ARRL [to transmit scheduled bulletins] but K1MAN has got to pay \$1,500. It's really a very simple matter when you look at it that way."

"If the Commission wants to stop the amateur information bulletins now, they will have to go to rule making and shut down W1AW, Westlink and everyone else. [Editor's note: Westlink no longer has an amateur bulletin service. Newsline is distributed to other amateurs via a telephone link.]

Baxter said his next step is to submit an *Application for Review by the Full Commission* which he is in the process of doing. He will argue that his bulletin service complies more fully with the Rules than does the League's W1AW of which the Commission approves.